

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, a
Pennsylvania Company,

V

Plaintiff,

COINSTAR, INC., a Delaware Company;
REDBOX AUTOMATED RETAIL, LLC

Defendants.

NO.

COMPLAINT FOR DECLARATORY
JUDGMENT

28 U.S.C. § 2201 *et seq.*

Plaintiff, National Union Fire Insurance Company of Pittsburgh, PA (“National Union”),
by Complaint against Defendants, Coinstar, Inc. (“Coinstar”) and Redbox Automated
LLC (“Redbox”), alleges and states as follows:

I. INTRODUCTION

1. This is an action for declaratory relief to settle important questions concerning the
Defendants' claims for reimbursement of defense and potentially indemnity costs relating to a

COMPLAINT FOR DECLARATORY JUDGMENT - 1

Andrews-Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

1 lawsuit asserted against Redbox by a purported class in a lawsuit captioned *Sterk, et al. v.*
2 *Redbox Automated Retail, LLC*, U.S. District Court for the Northern District of Illinois Cause
3 No. 11-cv-01729 (“Sterk Lawsuit”).

4 2. Defendant Redbox has provided Plaintiff with notice of the Sterk Lawsuit and has
5 demanded that Plaintiff defend and indemnify Redbox pursuant to two Commercial General
6 Liability Insurance policies issued to Coinstar, Inc.

7 3. Plaintiff files this lawsuit in order to obtain a declaration that it has no current
8 obligation to defend or indemnify Redbox for the claims asserted in the Sterk Lawsuit.

9 **II. THE PARTIES**

10 4. Plaintiff National Union, incorporated in Pennsylvania, is an insurance company
11 with its principal place of business located in New York City, New York. It is authorized to
12 transact business and has transacted business in the State of Washington.

13 5. Upon information and belief, Defendant Coinstar is a Delaware corporation with
14 its principal place of business in the State of Washington.

15 6. Upon information and belief, Defendant Redbox is a Delaware Limited Liability
16 Company with its principal place of business in Chicago, Illinois, and doing business in the State
17 of Washington.

18 **III. JURISDICTION AND VENUE**

19 7. Jurisdiction is premised on the diversity of citizenship of Plaintiff and Defendants
20 pursuant to 28 U.S.C § 1332. The amount in controversy, exclusive of interests and costs, exceeds
21 \$75,000.

22 COMPLAINT FOR DECLARATORY JUDGMENT - 2

Andrews•Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

IV. GENERAL ALLEGATIONS

8. Plaintiff issued Commercial General Liability Insurance Policy Number 457-30-37 to Coinstar, Inc., which was in effect from September 1, 2009 to September 1, 2010.

9. Plaintiff issued Commercial General Liability Insurance Policy Number 457-32-92 to Coinstar, Inc., which was in effect from September 1, 2010 to September 1, 2011. (National Union Policy nos. 457-30-37 and 457-32-92 are hereby collectively referred to as "National Union policies.")

10. On or about December 30, 2011, Defendant Redbox was sued in U.S. District Court for the Northern District of Illinois, Eastern Division in the matter captioned *Sterk, et al. v. Redbox Automated Retail, LLC*, which was filed under Cause No. 11-cv-01729. The Complaint included allegations that Redbox violated the Video Privacy Protection Act, 18 U.S.C. § 2710.

11. Defendant Redbox subsequently tendered the Sterk Lawsuit to National Union for defense and indemnity under the National Union policies issued to Defendant Coinstar.

12. Defendant National Union agreed to defend Redbox subject to a full reservation of rights.

V. CLAIM FOR DECLARATORY RELIEF

13. The allegations in paragraphs 1 through 12 are incorporated by reference as if fully set forth herein.

14. An actual controversy exists between National Union and Defendants Coinstar and Redbox, regarding whether Redbox is entitled to coverage for defense and indemnity under the National Union policies with respect to the Sterk Lawsuit.

15. A declaratory judgment will terminate the controversy and remove uncertainty

1 regarding the rights and duties of the parties under the National Union policies with respect to the
2 Sterk Lawsuit.

3 **A. Coverage Under National Union Policies**

4 16. The allegations in paragraphs 1 through 15 are incorporated by reference as if
5 fully set forth herein.

6 17. The National Union policy terms that do or may preclude a duty to defend and
7 indemnify Redbox in the Sterk Lawsuit, and that do or may preclude a duty to defend and
8 indemnify and otherwise preclude any further obligation to Redbox by National Union with
9 respect to the Sterk Lawsuit plaintiffs' claims include, but are not limited to:

10 a. The insuring agreements in the National Union policies' general liability
11 coverage form provide:

12 SECTION I – COVERAGES

13 COVERAGE A BODILY INJURY AND PROPERTY
14 DAMAGE LIABILITY

15 1. Insuring Agreement

16 a. We will pay those sums that the insured becomes
17 legally obligated to pay as damages because of
18 "bodily injury" or "property damage" to which this
19 insurance applies. We will have the right and duty
20 to defend the insured against any "suit" seeking
21 those damages. However, we will have no duty to
22 defend the insured against any "suit" seeking
damages for "bodily injury" or "property damage"
to which this insurance does not apply. We may, at
our discretion, investigate any "occurrence" and
settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is
limited as described in Section III - Limits
Of Insurance; and

1 (2) Our right and duty to defend ends when we
2 have used up the applicable limit of
3 insurance in the payment of judgments or
settlements under Coverages A or B or
medical expenses under Coverage C.

4 No other obligation or liability to pay sums or
5 perform acts or services is covered unless explicitly
6 provided for under Supplementary Payments -
Coverages A and B.

7 b. This insurance applies to "bodily injury" and
"property damage" only if:
8 (1) The "bodily injury" or "property damage" is
caused by an "occurrence" that takes place
in the "coverage territory";
9 (2) The "bodily injury" or "property damage"
occurs during the policy period; and
10 (3) Prior to the policy period, no insured listed
under Paragraph 1. of Section II - Who Is
An Insured and no "employee" authorized
by you to give or receive notice of an
"occurrence" or claim, knew that the "bodily
injury" or "property damage" had occurred,
in whole or in part. If such a listed insured
or authorized "employee" knew, prior to the
policy period, that the "bodily injury" or
"property damage" occurred, then any
continuation, change or resumption of such
"bodily injury" or "property damage" during
or after the policy period will be deemed to
have been known prior to the policy period.

17 COVERAGE B PERSONAL AND ADVERTISING
18 INJURY LIABILITY

19 1. Insuring Agreement

20 a. We will pay those sums that the insured becomes
legally obligated to pay as damages because of
"personal and advertising injury" to which this
insurance applies. We will have the right and duty
21 to defend the insured against any "suit" seeking
22

those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III — Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments — Coverages A and B.

b. This insurance applies to “personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed in the “coverage territory” during the policy period.

13 b. There is no coverage under the National Union policies for the claims
14 asserted in the Sterk Lawsuit because there was no “bodily injury” or “property damage” caused
15 by an “occurrence.”

16 c. There is no coverage under the National Union policies for the claims
17 asserted in the Sterk Lawsuit because there was no “personal and advertising injury” caused by
18 an “occurrence”

19 d. There also is no coverage for the claims asserted in the Sterk Lawsuit
20 because certain exclusions apply. These exclusions include, but are not limited to what is listed
21 here:

1 2. Exclusions

2 This insurance does not apply to:

3 a. Knowing Violation Of Rights Of Another

4 “Personal and advertising injury” caused by or at
5 the direction of the insured with the knowledge that
6 the act would violate the rights of another and
7 would inflict “personal and advertising injury”.

8 c. Material Published Prior To Policy Period

9 “Personal and advertising injury” arising out of oral
10 or written publication of material whose first
11 publication took place before the beginning of the
12 policy period.

13 p. Distribution of Material In Violation Of Statutes

14 This insurance does not apply to any loss, injury,
15 damage, claim, suit, cost or expense arising out of
16 or resulting from, caused directly or indirectly, in
17 whole or in part by, any act that violates any statute,
18 ordinance or regulation of any federal, state or local
19 government, including any amendment of or
20 addition to such laws, that addresses or applies to
21 the sending, transmitting or communicating of any
22 material or information, by any means whatsoever.

16 **B. Deductible Amount**

17 18. The allegations in paragraphs 1 through 17 are incorporated by reference as if
18 fully set forth herein.

19 19. The National Union policies both contain Washington Deductible Coverage
20 Endorsement - Form A, which provides in pertinent part:

21 I. Payment and Deductible Conditions

1 A. We will pay all sums that we become obligated to
2 pay up to our Limit of Insurance under the policy to
3 which this endorsement applies. Our Limit of
4 Insurance includes, and shall not apply in addition
5 to, any sum that you must reimburse us for
6 damages, benefits or Medical Payments we have
7 paid.

8 B. You must reimburse us up to the Deductible
9 Limit(s) shown in the Schedule for any amounts we
10 have so paid as damages, benefits or Medical
11 Payments. The Deductible will apply to each
12 "occurrence", "accident", offense, claim or other
13 basis as shown in the Schedule, regardless of the
14 number of persons or organizations who sustain
15 damages because of an "occurrence" or "accident"
16 or offense or other basis shown in the Schedule.

17 C. In addition, you must reimburse us for all
18 "Allocated Loss Adjustment Expense" we pay as
19 Supplementary Payments, according to the election
20 indicated by an "X" below. If no election is
21 indicated, election i. applies.

22 X i. All "Allocated Loss Adjustment Expense"
23 up to the deductible limit. However, the
24 most you must reimburse us for damages,
25 benefits, Medical Payments and "Allocated
26 Loss Adjustment Expense" combined shall
27 not exceed the deductible amount.

28 Your obligation to reimburse us for "Allocated Loss
29 Adjustment Expense" applies separately to "each
30 occurrence" for bodily injury or property damage,
31 each "accident" for bodily injury or property
32 damage, to each offense for personal injury or
33 advertising injury, to "each claim" for professional
34 liability or employee benefits administration
35 liability, or to each other basis shown in the
36 Schedule.

37 II. Additional Conditions

38 A. Duty to Reimburse

39 1. You must reimburse us in accordance with
40 this endorsement for any payment we make

in good faith on behalf of any person or organization insured under any policy to which this endorsement applies.

2. Reimbursement is due and payable within fifteen (15) days of your receipt of an invoice for such reimbursement from us.
3. Each Named Insured is jointly and severally liable for all reimbursable amounts under this policy.

Part 2. COVERAGES TO WHICH DEDUCTIBLE APPLIES

This Part 2A. applies to all coverages OTHER THAN Business Auto, Garage, Truckers or Motor Carriers Auto Insurance.

The Deductible Amount of \$25,000 applies on a combined basis to all coverages selected by "X" in the table below, except for such coverages (if any) for which a separate Deductible is shown below.

Selected	Coverage	Deductible Amount	Per Occurrence	Per Claim
<input checked="" type="checkbox"/>	Bodily Injury - Other than Products or Completed Operations	\$25,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Property Damage - Other than Products or Completed Operations.	\$25,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bodily Injury - Products or Completed Operations Only	\$25,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Property Damage - Products or Completed Operations Only	\$25,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<input checked="" type="checkbox"/>	Personal Injury	\$25,000	Each person or organization
<input checked="" type="checkbox"/>	Advertising Injury	\$25,000	Each person or organization
<input type="checkbox"/>	Employee Benefit Liability		N/A <input type="checkbox"/>
<input type="checkbox"/>	All Other		<input type="checkbox"/> <input type="checkbox"/>

20. In the event it is determined that there is coverage under Coverage Part B for the Sterk Lawsuit under one or both of the National Union policies, which is expressly denied by

1 Plaintiff National Union, the Washington Deductible Coverage Endorsement - Form A imposes a
2 \$25,000 per person deductible for coverage for personal injury and advertising injury.

3 21. The Sterk Lawsuit has been filed as a class action. In the event a class is certified,
4 Redbox would be obligated to pay a deductible of \$25,000 per class member.

5 22. To the extent National Union has made payments in good faith on behalf of
6 Redbox in the Sterk Lawsuit, Redbox would be obligated to reimburse National Union up to
7 \$25,000 per person.

8 **VI. RELIEF REQUESTED**

9 Plaintiff National Union respectfully requests that the court grant the following relief:

10 1. Pursuant to 28 U.S.C. § 2201, for a declaratory judgment that National Union has no
11 duty to defend or indemnify Redbox for the Sterk Lawsuit under the National Union policies;

12 2. In the alternative, in the event it is determined that one or both National Union
13 policy provides coverage for the Sterk Lawsuit, pursuant to 28 U.S.C. § 2201, for a declaratory
14 judgment that Redbox is obligated to pay a deductible of \$25,000 per class member;

15 3. For reimbursement of up to \$25,000 per person, which would include each member
16 of the putative class, for payments made by National Union on behalf of Redbox in the Sterk
17 Lawsuit;

18 4. For attorney's fees, costs, and disbursements herein; and

19 5. Award National Union such other and further relief as this Court may deem proper.

20 ///

21 ///

22 ///

COMPLAINT FOR DECLARATORY JUDGMENT -
10

Andrews • Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

1
DATED this 12th day of June, 2013.
2
3

4 ANDREWS ■ SKINNER, P.S.
5
6

7 By: /s/Stephen G. Skinner
8

9 STEPHEN G. SKINNER, WSBA #17317
10 Email: Stephen.Skinner@andrews-skinner.com
11 A N D R E W S ■ S K I N N E R , P . S .
12 645 Elliott Ave. W., Ste. 350
13 Seattle, WA 98119
14 Tel: 206-223-9248 ■ Fax: 206-623-9050
15 Attorney for Plaintiff National Union Fire Insurance
16 Company of Pittsburgh, PA
17
18
19
20
21
22

COMPLAINT FOR DECLARATORY JUDGMENT -
11

Andrews ■ Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 ■ Fax: 206-623-9050

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

ANDREWS ■ SKINNER, P.S.

By: /s/Stephen G. Skinner

STEPHEN G. SKINNER, WSBA #17317
Email: Stephen.Skinner@andrews-skinner.com
A N D R E W S ■ S K I N N E R , P. S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 ■ Fax: 206-623-9050
Attorney for Plaintiff National Union Fire Insurance
Company of Pittsburgh, PA

COMPLAINT FOR DECLARATORY JUDGMENT -
12

Andrews-Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050